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Dedicated to the advancement of the civil helicopter industry

February 17, 2000

Docket Management System
US DOT
Room PL 401
400 Seventh Street SW
Washington DC 20590-0001

By Internet: <http://dms.dot.gov>

Re: *Docket No. FAA-1999-6622, "General Rulemaking Procedures," Notice No. 99-20, 64 Fed. Reg. 69856 (Dec. 14, 1999).*

Dear Madam Administrator:

Helicopter Association International (HAI) submits this comment to Docket No. FAA-1999-6622, "General Rulemaking Procedures," Notice No. 99-20, 64 Fed. Reg. 69856 (Dec. 14, 1999). HAI is a non-profit, professional trade association of over 1,400 member organizations. Since 1948, HAI has been dedicated to promoting the helicopter as a safe and efficient method of transportation, and to the advancement of the civil helicopter industry.

The comment period associated with this notice of proposed rulemaking (NPRM) closed on January 28, 2000, permitting a total of six weeks to review and respond to this proposal. However, during this six week period, several significant cultural holidays and HAI's annual trade show and exposition, Heli-Expo, took place. Because HAI views 14 CFR part 11 as a critically important part of the federal aviation regulations, we strove to conduct a thorough analysis of this NPRM; in the end, our analysis required more time than was available to us during the comment period. HAI apologizes for the delay in filing this comment and asks FAA to consider this comment despite its late filing.

The following comment is organized in two main parts: general comments applicable to many sections of proposed new part 11, and comments on specific sections. These are presented below under the respective headings.

General Comments

HAI welcomes the clear and concise exposition and direct tone of the revised regulation language proposed in the NPRM. Overall, we find the proposed text of the regulations easy to read, easy to understand, and very informative. Although HAI suggests a few changes to the details of certain sections, discussed below, overall we believe that the proposed language achieves FAA's goals of

eliminating redundant and outdated information, and of stating regulatory requirements in terms understandable to ordinary citizens.

We particularly welcome the consolidation and streamlining of procedures proposed in the NPRM. The new organizational structure is lean and efficient, yet appears to be complete. As reorganized and restated in the NPRM, proposed new part 11 is much easier to understand and work with than the current rule. This reorganization and restatement reflects considerable effort and intellectual discipline on FAA's part, and is most welcome.

However, HAI finds the question and answer (Q&A) format proposed in the regulations to be a barrier to efficient use of proposed new part 11. The Q&A format does not lend itself to use of the table of sections as a research tool; rather, this format forces the reader to read the table of sections like a novel, and inhibits quickly reviewing the section headings to locate required information.

The Q&A format also imposes on proposed new part 11 a simplistic tone that is both at odds with the professional rigor and discipline that characterizes the revised section material itself, and which HAI's members who reviewed the NPRM found pedantic and annoying. In at least one instance, the Q&A format leads to absurd results; *see* proposed § 11.61, which reads, in its entirety, "Yes." Stating all of the relevant regulatory information in the section heading in the form of a rhetorical question reduces the tone of this section to something close to silly.

HAI urges FAA to abandon the Q&A format, which HAI and its members who reviewed this NPRM find to be a barrier to the efficient use of proposed part 11, and to rewrite all proposed section headings as descriptive titles that are not complete sentences or as simple declarative sentences. As between these suggested options, descriptive titles that are not complete sentences are preferred, as these most fully facilitate use of the table of sections as a research tool.

In the NPRM preamble, FAA states that, "New part 11 would not specify time periods for agency action. The FAA will respond to petitions for airspace designations in a timely manner, and will provide a reasonable time for you to submit comments and to participate in any public meetings." 64 Fed. Reg. at 69857. HAI members who reviewed the NPRM found this position to be untenable; one summed up the response of HAI's members by noting that this policy amounts to a license to provide poor service to the public. In this member's and HAI's view, if a business were to adopt such a policy, it would not survive.

HAI believes that public announcement of disciplined but realistic response time goals helps FAA to maintain an acceptable level of responsiveness to the public, and helps the public to form realistic expectations concerning FAA's willingness and ability to respond. HAI urges FAA to state appropriately disciplined and realistic response times in all the sections of new part 11 that discuss FAA actions or responses, both as regards airspace designations and as regards FAA's other rulemaking responsibilities.

Finally, HAI vigorously objects to the omission of current § 11.65 from proposed new part 11. Section 11.65 currently provides that an interested person may discuss or confer informally with appropriate FAA officials concerning a proposed action. In practice, FAA sometimes declines to discuss rulemaking activities with members and representatives of the public, citing "ex parte" policy constraints. In HAI's view, FAA's "ex parte" policy is extreme when compared to the policies of other federal agencies, unnecessary, counterproductive and based on a 30 year old misunderstanding of the nature of the rulemaking process.

Authoritative legal treatises describe the administrative rulemaking process, the subject of 14 CFR part 11, as akin to legislative lawmaking, a process throughout which public participation is to be encouraged. FAA's ex parte policy treats rulemaking as if it were adjudication, a process in which the impartiality of the decision maker is a paramount concern. FAA's ex parte policy transforms rulemaking into a technocratic exercise conducted by bureaucrats in a self-imposed vacuum. Much mischief results, much of it inadvertent. In recent years, FAA has turned aside opportunities to improve specific rules by denying itself the benefit of public consultation at critical points in its rulemaking process, by application of its ex parte policy. The proposed omission of current § 11.65 would exacerbate this unfortunate state of affairs.

HAI believes that, like legislating, rulemaking should be conducted in public, with public participation throughout. HAI urges FAA to restate current § 11.65 in the clear, direct and disciplined style characteristic of proposed new part 11, and to include this language in the new final rule.

Comments Pertaining to Specific Sections

Proposed Section 11.43: As proposed in the NPRM, this section would be headed "What information **must** I put in my written comments?" (*emphasis added*), and would provide, in relevant part, "Your comments . . . **must** contain the following: (c) Information, views, or arguments that follow the instructions for participation that appear in the rulemaking document on which you are commenting. (d) All available material that is relevant to any statement of fact in your comments. (e) The document title and page number of any material that you reference in your comments." (*Emphasis added.*)

As written, this section may be interpreted to impose unreasonable and unnecessary burdens on the public. Taking the quoted clauses in turn, proposed subsection (c) is unclear; it seems to mean that a comment may be rejected by FAA if it fails to contain all of the "information, views, or arguments" specified in the "instructions for participation that appear in [the subject] rulemaking document." Current FAA practice is to pose specific questions in rulemaking documents as appropriate, but to accept all relevant and pertinent comments on a rulemaking proposal, regardless of whether any particular question raised by FAA is addressed therein. HAI believes that the

restrictive implications of proposed § 11.43(c) are not intended by FAA. HAI suggests that this subsection be revised to more clearly reflect FAA's authority to request comments on specific aspects of a proposal, and its willingness to accept all relevant and pertinent comments regardless of whether the commenter addresses FAA's specific concerns.

Proposed subsection (d) requires a commenter to provide "all available material." The proposed language cannot be literally correct, as no commenter could possibly meet this burden. Rather, FAA must have meant "all material available to the commenter." HAI urges FAA to revise this subsection to more clearly impose a reasonable burden of production on the public.

Proposed subsection (e) suggests that FAA may decline to consider a comment that fails to cite "the document title and page number of any material that you reference in your comments." HAI believes that this is an unreasonable burden to impose on the public. Like the FAA itself, the public affected by FAA rulemaking activity is not composed principally of lawyers nor of lay persons who observe the niceties of forensic debate. The proposed subsection suggests that FAA may disregard the very comment you are now reading, because in an earlier paragraph HAI refers, without citation, to "[a]uthoritative legal treatises."

HAI believes that most members of the public who comment on FAA rulemaking proposals will not cite title and page of materials they reference in their comments. HAI further believes that this omission is of no consequence because the material to which reference is made is usually widely known, widely available, or easily obtained. (HAI believes its own reference to "[a]uthoritative legal treatises" falls into all three categories.) Moreover, HAI believes that FAA's practice is to evaluate each comment on the merit of its reasoning, rather than to impose undue formalistic barriers to public participation in the rulemaking process.

HAI suggests that FAA revise proposed § 11.43(d) to more clearly reflect FAA's willingness to consider all relevant and pertinent comments, and to point out that citation to referenced materials is often helpful to FAA as it works to formulate the best possible rule.

Proposed Section 11.61: This section states all the relevant regulatory information in the section heading. A common rule of statutory construction, often applied by courts in construing administrative regulations, is that section headings are not material. Application of this common rule to the language of proposed § 11.61 leads to absurd results.

This proposed section should be revised to state the relevant regulatory information in the section text, rather than in the section heading. Inasmuch as the relevant regulatory information is not extensive, it may be appropriate to state this information as a subsection of some other section.

Proposed Sections 11.61, 11.63 (Tables) HAI Finds that the tabular presentation of information in proposed §§ 11.61 and 11.63 is confusing, and that simple declarative sentences would be more

effective in conveying the pertinent information. For example, HAI believes that the following two sentences convey all the information found in the table at § 11.61: "If you want FAA to adopt, amend, or repeal a regulation, submit a petition for rulemaking. If you want to ask FAA to grant you relief from the requirements of a current rule, submit a petition for exemption."

HAI believes that the information expressed in the table at § 11.63 is more clearly expressed in the form of paragraphs; for example:

"Submit your petitions to the following places:

"A petition concerning Part 39, 'Airworthiness Directives,' should be submitted to the Certification Directorate having airworthiness responsibility for the product involved.

"A petition concerning Part 139, 'Certification of Airports,' should be submitted to the FAA airport field office in whose area the airport is located.

"[Guidance concerning other specific petitions]

"All other petitions for rulemaking should be submitted to [TBA]

"All other petitions for exemption should be submitted to [TBA]"

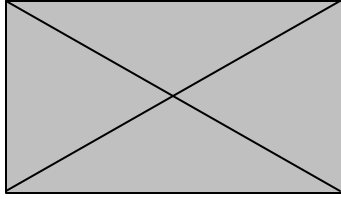
HAI recommends that FAA either dispense with the tables at proposed §§ 11.61 and 11.63, or include the tables in addition to simple declarative sentences stating the same information in text.

Section 11.73. This proposed section sets out the criteria FAA will apply in disposing of petitions for rulemaking. This is helpful information, and HAI welcomes its presentation in this concise format. However, this section fails to provide that FAA will notify the petitioner of the disposition of its petition pursuant to proposed subsection 11.73(b). HAI believes that subsection 11.73(b) should be modified to inform the public of, and to preserve, FAA's practice of notifying petitioners by mail of the disposition of their petitions pursuant to the scenarios outlined in proposed subsection 11.73(b).

Conclusion

HAI welcomes the clear, concise and disciplined approach FAA has taken in the NPRM to reorganizing and restating the requirements of 14 CFR part 11. HAI strongly urges FAA to retain in the final rule the provisions of current section 11.65, and to address the other issues raised by HAI in this comment.

Respectfully Submitted,



Roy Resavage
President